

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER M. OWENS, et al.,

Plaintiffs,

v.

IRIS CANADA, et al.,

Defendants.

Case No. [16-cv-01387-EMC](#)

ORDER REMANDING CASE

On March 22, 2016, Defendant Iris Canada removed the instant case from state court, on the basis of diversity jurisdiction. Docket No. 1. This is the second time that Ms. Canada has removed the case; this Court previously remanded the case on February 12, 2016, finding that the court lacked subject matter jurisdiction in the case. Case No. 16-cv-514, Docket No. 13 (Ord.) at 2. In short, the Court found that Ms. Canada's removal based on diversity jurisdiction was improper because: (1) a civil action may not be removed if any defendant is a citizen of the state in which the action is brought (forum defendant rule) and Ms. Canada is a California resident, and (2) the attempted removal was untimely. *Id.* at 2-3.


Ms. Canada now seeks to remove on the basis of federal question jurisdiction and diversity jurisdiction. The Court finds that neither are an appropriate basis for jurisdiction. First, Ms. Canada does not establish federal question jurisdiction. Federal question jurisdiction depends on the contents of the plaintiff's (*i.e.*, the Owens's) well-pleaded complaint and may not be predicated on the defendant's (*i.e.*, Ms. Canada's) counterclaims or defenses. *See Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002); *ARCO Envtl. Remediation, LLC v. Dep't of Health & Envtl. Quality*, 213 F.3d 1108, 1113 (9th Cir. 2000). Thus, even if Ms. Canada asserts defenses or counterclaims based on federal statutes, federal question jurisdiction is

1 dependent on the Owens's complaint (which brings claims solely under state law). *See* Docket
2 No. 1-1 (Compl.). Second, Ms. Canada is still unable to establish diversity jurisdiction per the
3 forum defendant rule and because her removal is untimely. As the Court lacks jurisdiction over
4 this case, the Court **REMANDS** this action back to the Superior Court of San Francisco.

5 Ms. Canada is forewarned that any further attempts to remove this case will result in the
6 Court imposing sanctions.

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8 **IT IS SO ORDERED.**

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10 Dated: April 5, 2016

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14 EDWARD M. CHEN
15 United States District Judge
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